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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/669,157	09/22/2003	Rance W. Searle	T9539.B	1657
20450	7590	10/14/2005	EXAMINER	
ALAN J. HOWARTH P.O. BOX 1909 SANDY, UT 84091-1909			VALENTI, ANDREA M	
			ART UNIT	PAPER NUMBER
			3643	

DATE MAILED: 10/14/2005

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/669,157
Filing Date: September 22, 2003
Appellant(s): SEARLE ET AL.

Alan J. Howarth, Ph.D.
For Appellant

EXAMINER'S ANSWER

MAILED

OCT 14 2005

GROUP 3600

This is in response to the appeal brief filed 08 August 2005 appealing from the Office
action mailed 18 October 2004.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief, Rance W. Searle and Marty G. Hanson.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

AU 9217076A	Khoury	05-1991
4,287,997	Rolfe et al	09-1981

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1, 2, 4, 5, 7-10 and 13-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Australian Patent AU 9217076 to Khoury in view of U.S. Patent No. 4,287,997 to Rolfe et al.

This rejection is set forth in a prior Office action, mailed 18 October 2004.

(10) Response to Argument

Examiner maintains that the combination of Khoury and Rolfe teach each and every limitation of the presently claimed invention.

Khoury was cited to teach the structure of the container (see attached Australian Patent to Khoury) and Rolfe was cited to teach the known feature of attaching two containers together. The container or "crate" of Khoury just merely has to be capable of functioning as a planter. In response to applicant's argument that the crate is not a planter, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim (purely for example, U.S. Patent No. 5,561,947 to Greenarch teaches a crate planter), the crate/container of Khoury is capable of functioning as a planter.

In response to applicant's argument that the teachings of Rolfe is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the

Art Unit: 3643

applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, the examiner maintains that Rolfe is in fact analogous art since it is related to the same field of endeavor, i.e. containers. Both Rolfe and Khoury teach containers. A search in the field of containers would lead to both references.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). Examiner maintains that the combination of the teachings of Khoury and Rolfe merely take into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made.

The Rolfe reference was merely cited to teach that it is notoriously well-known to place flanges on a container in order to attach another container to it, i.e. to have multiple containers attached to one-another. Rolfe teaches it is known to secure multiple containers together and thus does not teach away from making the presently claimed invention.

Applicant has argued that the flange element is attached to the door and not on the sidewall. However, it is the examiner's position that Rolfe does teach that the flange

Art Unit: 3643

(Rolfe Fig. 2 #31) is attached to the sidewall and not the door (Rolfe Fig. 2 #28). The door is located in the sidewall and the flange is adjacent the door (Rolfe Col. 2 line 34-54). Even if the flange happened be on the door, since the door is on the sidewall the flange on the door would also be considered to be on the sidewall. However, this is irrelevant since Rolfe does in fact teach that Flange #31 is on the sidewall. Examiner maintains that Rolfe teaches a flange (Rolfe #31) and Rolfe teaches a bracket (Rolfe #30).

As previously stated, Rolfe was cited to teach the known concept of flanges on containers for connecting multiple containers. Although Rolfe only depicts two containers together side-by-side it would have been obvious to one of ordinary skill in the art to add additional flanges to other sides of the container, or to the second container, so that a third or fourth container could be attached thereto. This modification is merely the duplication of a known element for a multiple effect performing the same intended function of attaching multiple containers for the advantage of transporting and shipping as one unit.

The examiner has taken the position that Rolfe clearly teaches a flange (Rolfe #31) on the sidewall of the container. In addition, Rolfe teaches flanges on the top and bottom of the container that facilitate further attaching and stacking. Rolfe elements #12, #11, and #13 of Figure 2 can also be considered flanges on walls of the container that enable attaching of multiple containers together at different locations around the first container (i.e. top, side, or bottom). This further supports the argument that it would

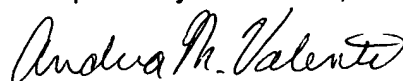
Art Unit: 3643

have been obvious to one of ordinary skill in the art to modify the teachings with more than two containers attached to each other.

Examiner maintains that there is sufficient motivation for one of ordinary skill in the art to modify the teachings of Khoury with the teachings of Rolfe since Rolfe teaches that multiple containers can be attached to each other for ease of shipping and transporting (Rolfe Col. 2 line 55-64). Thus the examiner maintains that applicant has not patentably distinguished over the teachings of the cited prior art. It would have been obvious to one of ordinary skill in the art to take the teachings of the storage container of Khoury and modify it with the flange on the container of Rolfe for the advantage of connecting multiple containers together to form one unit. Adding one flange on one side or multiple flanges on different sides is merely a duplication of a known element for a multiple effect.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

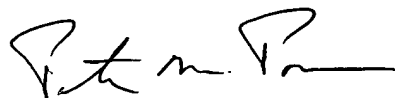


Andrea M. Valenti

Patent Examiner

Art Unit 3643

11 October 2005




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10/11/05